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BEFORE THE ARIZONA CORPORATION COMMISSION

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DOUG LITTLE – Interim Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE

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AZ CORP COMMISSION  
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF  
LIBERTY UTILITIES (BLACK MOUNTAIN  
SEWER) CORP., AN ARIZONA  
CORPORATION, FOR AUTHORITY TO  
ISSUE EVIDENCE OF INDEBTEDNESS IN  
AN AMOUNT NOT TO EXCEED \$3,400,000.

DOCKET NO. SW-02361A-15-0206

IN THE MATTER OF THE APPLICATION OF  
LIBERTY UTILITIES (BLACK MOUNTAIN  
SEWER) CORP., AN ARIZONA  
CORPORATION, FOR A DETERMINATION  
OF THE FAIR VALUE OF ITS UTILITY  
PLANTS AND PROPERTY AND FOR  
INCREASES IN ITS WASTEWATER RATES  
AND CHARGES FOR UTILITY SERVICE  
BASED THEREON.

DOCKET NO. SW-02361A-15-0207

**STAFF'S NOTICE OF FILING  
TESTIMONY REGARDING THE  
SETTLEMENT AGREEMENT**

The Utilities Division ("Staff") of the Arizona Corporation Commission  
("Commission") hereby files Testimony regarding the Settlement Agreement of Staff witness Elijah  
Abinah, regarding the above-captioned matters.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of January, 2016.

Robin Mitchell  
Wesley Van Cleve  
Attorneys, Legal Division  
Arizona Corporation Commission  
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Original and thirteen (13) copies of the  
foregoing filed this 27<sup>th</sup> day of January,  
2016, with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Arizona Corporation Commission

DOCKETED

JAN 27 2016

DOCKETED BY

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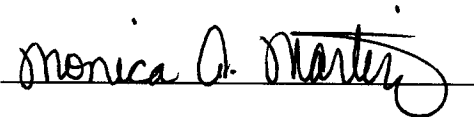
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

DOUG LITTLE  
Interim Chairman  
BOB STUMP  
Commissioner  
BOB BURNS  
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TOM FORESE  
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OF ITS UTILITY PLANTS AND PROPERTY )  
AND FOR INCREASES IN ITS WASTEWATER )  
RATES AND CHARGES FOR UTILITY )  
SERVICE BASED THEREON. )

DIRECT

TESTIMONY

OF

ELIJAH O. ABINAH

ASSISTANT DIRECTOR

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

JANUARY 27, 2016

**EXECUTIVE SUMMARY**  
**LIBERTY UTILITIES (BLACK MOUNTAIN SEWER), CORP.**  
**DOCKET NOS. SW-02361A-15-0206 SW-02361A-15-0207**

Mr. Abinah's testimony supports the adoption of the Settlement Agreement ("Agreement") as proposed by the Signatories in this case. This testimony describes the settlement process as open, candid, transparent and inclusive of all Signatories to this case. Mr. Abinah explains why Staff believes this Agreement is in the public interest.

Mr. Abinah's testimony recommends that the Commission adopt the Agreement as proposed.

**INTRODUCTION**

**Q. Please state your name and business address.**

A. My name is Elijah O. Abinah. My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

**Q. Where are you employed and in what capacity?**

A. I am employed by the Arizona Corporation Commission ("ACC" or "Commission") of the Utilities Division ("Staff") as Assistant Director.

**Q. How long have you been employed with the Utilities Division?**

A. I have been employed with the Utilities Division since January 2003.

**Q. Please describe your educational background and professional experience.**

A. I received a Bachelor of Science degree in Accounting from the University of Central Oklahoma in Edmond, Oklahoma. I also received a Master of Management degree from Southern Nazarene University in Bethany, Oklahoma. Prior to my employment with the ACC, I was employed by the Oklahoma Corporation Commission for approximately eight and a half years in various capacities in the Telecommunications Division.

**Q. What are your current responsibilities?**

A. As an Assistant Director, I review submissions that are filed with the Commission and make policy recommendations to the Director regarding those filings.

**Q. Have you previously submitted testimony before the Commission?**

A. Yes.

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is to support the Proposed Comprehensive Settlement  
3 Agreement ("Agreement"). I will also provide testimony which addresses the settlement  
4 process, public interest benefits and general policy considerations.  
5

6 **Q. Did you participate in the negotiations that led to the execution of the Agreement?**

7 A. Yes, I did.  
8

9 **Q. How is your testimony being presented?**

10 A. My testimony is organized into three sections. Section I is this introduction, Section II provides  
11 a brief background, Section III provides discussion of the settlement process, Section IV  
12 discusses the various parts of the Agreement and discusses the reasons why the Agreement is  
13 in the public interest.  
14

15 **SECTION II - BACKGROUND**

16 **Q. Please provide a brief background of this proceeding.**

17 A. In 2008, Liberty (Black Mountain) Sewer Corp. ("Black Mountain" or "Company") filed a rate  
18 application. One of the issues in that case was the odors that emanated from the Boulders  
19 Wastewater Treatment Plant ("WWTP"). Black Mountain and the Boulders Homeowners  
20 Association ("BHOA") entered into a Plant Closure Agreement. The Town of Carefree  
21 ("Town") was also a party to the rate case and supported the Plant Closure Agreement. The  
22 Commission issued Decision No. 71865 and stated that the Plant Closure Agreement was a  
23 reasonable resolution to the odor concerns raised by the Black Mountain customers. Decision  
24 No. 71865 approved a surcharge to collect certain cost related to the closure of the WWTP.  
25 The Plant Closure Agreement conditioned the closure of the WWTP on ending an Effluent  
26 Delivery Agreement with Wind P1 Mortgage Borrowers L.L.C. (now CP Boulders, L.L.C.  
27 hereinafter referred to as the "Resort") which operated the Boulders Resort. An agreement

1           could not be reached on the termination of the Effluent Delivery Agreement and the BHOA  
2           requested that the Commission reopen Decision No. 71865 and order the closure of the  
3           WWTP. The Commission, in Decision No. 73885 (May 8, 2013), ordered the Company to  
4           close the WWTP. The Resort appealed the Commission's decision. The Commission's  
5           decision was upheld by the Maricopa County Superior Court. The Resort then appealed the  
6           court's decision.

7  
8       **Q.    Please provide a brief overview of the Company's rate application.**

9       **A.**    Black Mountain filed a rate application and a financing application on June 22, 2015, and the  
10          two matters were consolidated on July 6, 2015. Among the reasons for the Company's  
11          application was the change in plans and estimated costs related to the closure of the WWTP  
12          and the need for a new commercial rate design.

13  
14       **Q.    What is the revenue increase and cost of equity requested by the Company?**

15       **A.**    Black Mountain proposed a base rate increase of \$56,929, or 2.54 percent, revenue increase  
16          from \$2,239,848 to \$2,296,777, which included a requested cost of equity of 10.8 percent. The  
17          Company also proposed to recover certain plant closure costs through a surcharge which would  
18          be designed to recover \$211,000 annually. The Company's proposal also included a request to  
19          recovery \$150,000 annually through a separate surcharge to recover rate case expense.

20  
21       **Q.    What is the revenue increase and cost of equity recommended by the Parties?**

22       **A.**    The Parties agree to a total revenue requirement of \$2,415,080, which results in an increase in  
23          revenues equal to \$175,232 over test year revenues, an increase of 7.82 percent with a 9.5  
24          percent cost of equity. The increase over the Company's initial request is the result of the  
25          inclusion of \$825,083 of costs in rate base. This rate base addition represents plant closure costs  
26          incurred as of September 30, 2015. Such deferred costs will be recorded as a regulatory asset

1 and the annualized amortization of this regulatory asset over a 20 year period, is also included  
2 in the Company's proposed Settlement rates.

3  
4 **Q. Is there anything you would like to point out?**

5 A. Prior to entering into settlement negotiations, the Company, the Town, the Resort and the  
6 BHOA entered into a settlement agreement ("Town/Resort Agreement"). The Town/Resort  
7 Agreement filed in the docket on November 16 2015. Staff was not involved in the negotiation  
8 nor was Staff a party to the Town/Resort Agreement. The Settlement Agreement provides that  
9 as to the parties to the Town/Resort Agreement, is still in effect as to those parties that  
10 executed it, except as the Town/Resort Agreement is specifically modified by the terms of the  
11 Settlement Agreement. The Town/Resort Agreement provides for the proposed dismissal of  
12 the Resort's Appeal of Decision No. 73885 (May 13, 2013) and the release of all claims related  
13 to the closure of the Boulders WWTP.

14  
15 **SECTION III – SETTLEMENT PROCESS**

16 **Q. Please discuss the settlement process.**

17 A. The settlement process was open, transparent and inclusive. All parties received notice of the  
18 settlement meeting and were accorded an opportunity to raise, discuss, and propose resolution  
19 to any issue that they desired.

20  
21 **Q. Who participated in those meetings?**

22 A. The following parties were participants in the meetings: Black Mountain; the Residential Utility  
23 Consumer Office ("RUCO"); the Town of Carefree, Arizona ("Town"); the Resort and Staff  
24 (collectively referred to as Parties).

25



1 **Q. Was there an opportunity for all issues to be discussed and considered?**

2 A. Yes, each party had the opportunity to raise and have its issues considered.

3  
4 **Q. Were the Parties able to resolve all issues?**

5 A. Yes, the Parties were able to resolve and reach agreement on all issues.

6  
7 **Q. How would you describe the negotiations?**

8 A. I believe that all participants zealously advocated and represented their interests. I would  
9 characterize the discussions as candid but professional.

10  
11 **Q. Would you describe the process as requiring give and take?**

12 A. Yes, I would. As a result of the varied interests represented in the settlement process, a  
13 willingness to compromise was necessary. As evidenced in the Agreement, the Parties  
14 compromised on what could be described as vastly different litigation positions.

15  
16 **Q. Because of such compromising, do you believe the public interest was compromised?**

17 A. No. As I will discuss later in this testimony, I believe that the compromises made by the Parties  
18 further the public interest.

19  
20 **IV. THE SETTLEMENT AGREEMENT**

21 **Q. What are the significant sections in the Settlement Agreement?**

22 A. The Settlement Agreement provides for the deferral of certain costs associated with the closure  
23 of the WWTP to be recovered by the Company in rates at a later date. The Settlement  
24 Agreement also provides for a new commercial rate design, which includes a monthly minimum  
25 and a volumetric charge based on water data to be provided to the Company by the water

1 providers in the Company's service area. The Settlement Agreement also provides a date  
2 certain of November 30, 2018 for the closure of the WWTP.

3  
4 **Q. Please describe the settlement as it relates to the closure of the WWTP.**

5 **A.** The Settlement Agreement addresses the costs that have been incurred as of September 30,  
6 2015, by Black Mountain relating to the closure, the costs associated with obtaining additional  
7 treatment capacity from the City of Scottsdale and the costs associated with the modification  
8 and realignment of the Company's collection and transmission system.

9  
10 **Q. Please describe the treatment of the actual costs related to the closure.**

11 **A.** As of September 30, 2015, Liberty Black Mountain had incurred \$1,133,080 in closure costs.  
12 The Company has agreed to the recovery of \$825,080. This amount is included in the  
13 Company's rates under the Settlement Agreement.

14  
15 **Q. Please describe the treatment of the replacement capacity costs.**

16 **A.** The Company has negotiated with the City of Scottsdale, an Amended and Restated  
17 Wastewater Treatment Agreement, and that such agreement is awaiting final approval by the  
18 City of Scottsdale. The cost is \$1.2 Million for the replacement capacity. For ratemaking  
19 purposes, upon payment to the City of Scottsdale, this amount shall be treated as a regulatory  
20 asset and the Company will be permitted to defer the cost of the replacement capacity,  
21 depreciation expense recorded on the underlying regulatory assets, and post-in service  
22 Allowance for Funds Used During Construction ("AFUDC") for later recovery in rates. The  
23 post-in service AFUDC rate shall be 7.71 percent, and that the deferred amount shall be  
24 depreciated at a rate of 5 percent at such time it is recognized for inclusion in rate base.

1 **Q. Please describe the treatment of the realignment costs.**

2 A. The cost associated with the modification and realignment of the Company's existing collection  
3 and transmission system is estimated to be \$3,899,700 which amount includes the \$1.2 Million  
4 for Replacement Capacity. The Parties agree that all costs shall be recorded on the Company's  
5 books and records as incurred. AFUDC should be recorded during construction in the  
6 ordinary and customary manner for such construction projects. Once the facilities are in  
7 service, the Company shall record but defer depreciation on the remaining costs of closure for  
8 recovery in rates in the Company's next rate case. Such deferred cost shall be recorded as a  
9 regulatory asset. The Company shall be permitted to recover and defer post-in service AFUDC  
10 at the rate of 7.71 percent.

11  
12 The Parties acknowledge that the remaining closure costs can only be estimated at this time,  
13 and the final remaining closure costs may be higher than the current estimate. The amounts  
14 subject to deferred depreciation and the amount subject to the accrual of post in-service  
15 AFUDC shall not exceed \$3,299,700 (\$2,699,700 plus a maximum of \$500,000 for post in-  
16 service AFUDC and deferred depreciation), exclusive of the cost of the Replacement Capacity.

17  
18 **Q. Is the Settlement Agreement in the public interest?**

19 A. Yes. There are several reasons why the Settlement Agreement is in the public interest. The  
20 terms of the Settlement Agreement produce a revenue requirement that will result in rates that  
21 are just and reasonable. Settlement of all contested issues will save time and the expense of a  
22 contested hearing. Further the Settlement Agreement:

- 23  
24 • Allows the Company the opportunity to earn an overall return of 7.71 percent and a  
25 9.5 percent return on equity, which provides the Company sufficient revenue to provide  
26 reliable service.

- 1           •       Provides for a commercial rate design that will be based upon water usage data from
- 2                   the water service providers in the Company's service, resolving complaints from the
- 3                   commercial customers and complying with a Commission directive.
- 4           •       Provides that the WWTP will close on or before November 30, 2018, thus removing
- 5                   the source of numerous odor and noise complaints by the Company's customers.
- 6           •       Replaces the previously Commission ordered surcharge with recovery of the cost of
- 7                   closure by inclusion in rates.
- 8           •       Upon approval of the Settlement Agreement by the Commission, the Resort will
- 9                   withdraw its appeal of Decision No. 73885, thus ending protracted and costly litigation.

10

11    **Q.     Does this conclude your Direct Testimony?**

12    A.     Yes, it does.